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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/699,692 | 11/04/2003 | Claude Lesage | 10562-39US GH/mb | 4942 |
| 20988 | 7590 | 04/13/2004 | EXAMINER | |
| OGILVY RENAULT 1981 MCGILL COLLEGE AVENUE SUITE 1600 MONTREAL, QC H3A2Y3 CANADA | | | WILSON, GREGORY A | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3749 | |
| DATE MAILED: 04/13/2004 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------|--------------------------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/699,692 | LESAGE, CLAUDE <i>[Signature]</i> |
| | Examiner | Art Unit |
| | Gregory A. Wilson | 3749 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 04 November 2003.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-12 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-12 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claim 12 objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 12 is dependent from itself.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7 and 11 rejected under 35 U.S.C. 102(b) as being anticipated by

Reynolds et al (6,109,216). **Reynolds et al** discloses a secondary burner (74) for a sealed combustion chamber (46) of a gas-fired hot water heater comprising a support base (12) for supporting a hot water heater (10), the combustion chamber being supported over the base under an inner casing (38) of the hot water heater and adapted to contain water to be heated by a primary burner (48) in the combustion chamber, an air inlet port (center of flame arrestor support 78) in a bottom wall of the combustion chamber to supply combustion air to the primary burner, a secondary burner (74)

secured entirely across the inlet port is direct unobstructed communication (SEE Figure 2) with the primary burner, the secondary burner (74) perforated disc having holes throughout its' inner surface (74a), with the air entering the gas burner from an outer surface (74b), the support base has air inlet openings (100) to permit ambient air supply. The secondary burner is made of wire mesh, ceramic material or other suitable material (which can inherently include stainless steel); the air inlet openings are screened with screens (102) (SEE Column 5, lines 16-28), the support base has perforated circumferential side walls (SEE Figure 3 & 16); burner (74) is secured a predetermined distance under the primary burner (48) and is concentrically aligned (SEE Figure 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Reynolds et al (6,109,216)** in view of **Valcic (6,003,477)**. **Reynolds et al** discloses the applicant's primary inventive concept including a secondary burner for a sealed combustion chamber of a gas-fired hot water heater, as stated above, but does not particularly teach the safety feature of shutting down the burner after detecting the temperature in the combustion chamber to be too high. **Valcic** teaches (SEE Claim 9) a

sensor (234) positioned within the combustion chamber and shuts off the burner when the temperature in the combustion chamber exceeds a predetermined temperature. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains to have modified the water heater of **Reynolds et al** to include the safety feature of **Valcic** for the purpose of shutting down the primary burner when the temperature inside the combustion chamber reaches dangerous levels.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory A. Wilson whose telephone number is (703) 308-1239. The examiner can normally be reached on 7 am - 4:30 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on (703)308-1935. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GREGORY WILSON
PRIMARY EXAMINER

Gregory A. Wilson
Gaw
April 8, 2004